

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\* \* \*

Jessica Brown,

Case No. 2:24-cv-00405-JAD-DJA

Plaintiff,

## Order

V.

## Metro Police; Rape Investigators,

## Defendants.

Under 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and has requested authority to proceed *in forma pauperis*. (ECF No. 6). Plaintiff also submitted a complaint. (ECF No. 1-1). Because the Court finds that Plaintiff's application is complete, it grants her application to proceed *in forma pauperis*. Because the Court finds that Plaintiff has not stated a claim upon which relief can be granted, the Court dismisses her complaint without prejudice.

## I. *In forma pauperis* application.

Plaintiff filed the affidavit required by § 1915(a). (ECF No. 6). Plaintiff has shown an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted under 28 U.S.C. § 1915(a). The Court will now review Plaintiff's complaint.

## II. Legal standard for screening.

Upon granting an application to proceed *in forma pauperis*, courts additionally screen the complaint under § 1915(e). Federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the

1 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70  
 2 F.3d 1103, 1106 (9th Cir. 1995).

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a  
 4 complaint for failure to state a claim upon which relief can be granted. Review under Rule  
 5 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d  
 6 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of  
 7 the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp.*  
 8 *v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual  
 9 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the  
 10 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*citing Papasan v.*  
 11 *Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual allegations  
 12 contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,  
 13 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory  
 14 allegations, do not suffice. *Id.* at 678. Where the claims in the complaint have not crossed the  
 15 line from conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.  
 16 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings  
 17 drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal  
 18 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

19 Federal courts are courts of limited jurisdiction and possess only that power authorized by  
 20 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Under 28 U.S.C.  
 21 § 1331, federal courts have original jurisdiction over “all civil actions arising under the  
 22 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when  
 23 federal law creates the cause of action or where the vindication of a right under state law  
 24 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277  
 25 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal-question jurisdiction exists is based on the  
 26 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a  
 27 federal question is presented on the face of the plaintiff’s properly pleaded complaint.”  
 28 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under 28 U.S.C. § 1332(a), federal

1 district courts have original jurisdiction over civil actions in diversity cases “where the matter in  
2 controversy exceeds the sum or value of \$75,000” and where the matter is between “citizens of  
3 different states.” Generally speaking, diversity jurisdiction exists only where there is “complete  
4 diversity” among the parties; each of the plaintiffs must be a citizen of a different state than each  
5 of the defendants. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

6 **III. Screening Plaintiff’s complaint.**

7 Plaintiff alleges that in 2022, she reported a rape to Metro Police. (ECF No. 1-1 at 2-3).  
8 Investigators told her that they would get back to her regarding the investigation, but they never  
9 did. (*Id.*). Plaintiff asserts that the same day she reported the rape, she was given a ticket for not  
10 having a bike light. (*Id.*). Plaintiff alleges that she began to carry a steak knife to protect herself.  
11 (*Id.* at 4). In December of 2022, Plaintiff was arrested for possessing the knife. (*Id.*). When she  
12 tried to explain why she had the knife, Plaintiff alleges that “it was said no rape was reported.”  
13 (*Id.*). Although she references negligence, Plaintiff does not identify the constitutional or federal  
14 civil rights that she asserts Defendants violated in her first and second claims. (*Id.* at 2-4). In her  
15 third, she identifies and describes the Second Amendment, but does not allege any facts about  
16 how Defendants violated her Second Amendment rights. (*Id.* at 4).

17 Plaintiff has not alleged sufficient facts to state a claim upon which relief can be granted.  
18 To the extent she alleges negligence, she has not alleged the elements of duty, breach, causation,  
19 and damages. *See Sanchez v. Wal-Mart Stores, Inc.*, 221 P.3d 1276, 1280 (Nev. 2009)  
20 (explaining that, in Nevada, “[i]t is well established that to prevail on a negligence claim, a  
21 plaintiff must establish four elements: (1) the existence of a duty of care, (2) breach of that duty,  
22 (3) legal causation, and (4) damages.”). To the extent she alleges that she was unlawfully  
23 arrested, she has not alleged a lack of probable cause for her arrest. *Perez-Morciglio v. Las Vegas*  
24 *Metro. Police Dep’t*, 820 F. Supp. 2d 1111, 1120 (D. Nev. 2011) (citing *Dubner v. City & Cnty.*  
25 *of S.F.*, 266 F.3d 959, 964-65 (9th Cir. 2001)) (“[a] claim for unlawful arrest is cognizable under  
26 42 U.S.C. § 1983 as a violation of the Fourth Amendment, provided the arrest was without  
27 probable cause or other justification.”). To the extent she alleges that her Second Amendment  
28 rights were violated, she has not alleged how or by whom. The Court thus dismisses her

1 complaint with leave to amend. In any amended complaint, Plaintiff must provide facts about  
2 who violated her rights, which rights those were, how they violated her rights, and when.  
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4 **IT IS THEREFORE ORDERED** that Plaintiff's application to proceed *in forma*  
5 *pauperis* (ECF No. 6) is **granted**. Plaintiff will **not** be required to pay an initial installment fee.  
6 Nevertheless, the full filing fee will still be due, pursuant to 28 U.S.C. § 1915, as amended by the  
7 Prison Litigation Reform Act. The movant herein is permitted to maintain this action to  
8 conclusion without the necessity of prepayment of fees or costs or the giving of security therefor.

9 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915, as amended by the  
10 Prison Litigation Reform Act, the Florence McClure Women's Correctional Center will forward  
11 payments from the account of **Jessica Brown, Inmate No. 1175563**, to the Clerk of the United  
12 States District Court, District of Nevada, 20% of the preceding month's deposits (in months that  
13 the account exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk  
14 of Court is kindly directed to send a copy of this order to the Finance Division of the Clerk's  
15 Office. The Clerk of Court is also kindly directed to send a copy of this order to the attention of  
16 **Chief of Inmate Services for the Nevada Department of Corrections** at P.O. Box 7011,  
17 Carson City, NV 89702.

18 **IT IS FURTHER ORDERED** that, even if this action is dismissed, or is otherwise  
19 unsuccessful, the full filing fee will still be due, pursuant to 28 U.S.C. § 1915, as amended by the  
20 Prison Litigation Reform Act.

21 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to file Plaintiff's  
22 complaint (ECF No. 1-1) on the docket but shall not issue summons.

23 **IT IS FURTHER ORDERED** that the complaint (ECF No. 1-1) is **dismissed without**  
24 **prejudice** for failure to state a claim upon which relief can be granted, with leave to amend.  
25 Plaintiff will have until **May 15, 2024**, to file an amended complaint if the noted deficiencies can  
26 be corrected. If Plaintiff chooses to amend the complaint, Plaintiff is informed that the Court  
27 cannot refer to a prior pleading (i.e., the original complaint) to make the amended complaint  
28 complete. This is because, generally, an amended complaint supersedes the original complaint.

1 Local Rule 15-1(a) requires that an amended complaint be complete without reference to any  
2 prior pleading. Once a plaintiff files an amended complaint, the original complaint no longer  
3 serves any function in the case. Therefore, in an amended complaint, as in an original complaint,  
4 each claim and the involvement of each Defendant must be sufficiently alleged. **Failure to**  
5 **comply with this order will result in the recommended dismissal of this case.**

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DATED: April 15, 2024

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DANIEL J. ALBREGTS  
UNITED STATES MAGISTRATE JUDGE

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